

MARC M. SELTZER (54534)  
mseltzer@susmangodfrey.com  
SUSMAN GODFREY L.L.P.  
1900 Avenue of the Stars, Suite 1400  
Los Angeles, CA 90067-4405  
Telephone: (310) 789-3100  
Facsimile: (310) 789-3150

ANDREW J. ENTWISTLE (*Pro hac Vice*)  
aentwistle@entwistle-law.com  
ARTHUR V. NEALON (*Pro hac Vice*)  
anealon@entwistle-law.com  
ROBERT N. CAPPUCCI (*Pro hac Vice*)  
rcappucci@entwistle-law.com  
ENTWISTLE & CAPPUCCI LLP  
299 Park Avenue, 20th Floor  
New York, NY 10171  
Telephone: (212) 894-7200  
Facsimile: (212) 894-7272

*Counsel for FNY Investment Advisers, LLC*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KALMAN ISAACS, on behalf of himself and  
all others similarly situated,

Plaintiff,

vs.

ELON MUSK and TESLA, INC.,

Defendants.

Case No. 3:18-cv-04865-EMC

Hon. Edward M. Chen

CLASS ACTION

REPLY DECLARATION OF SHAWN I.  
FISCHMAN IN FURTHER SUPPORT OF  
FNY INVESTMENT ADVISERS, LLC'S  
MOTION FOR CONSOLIDATION,  
APPOINTMENT AS LEAD PLAINTIFF  
AND APPROVAL OF SELECTION OF  
LEAD COUNSEL

Date: November 15, 2018

Time: 1:30 p.m.

Place: Courtroom 5, 17<sup>th</sup> Floor

*[Additional captions appear on following  
pages]*

DECLARATION OF SHAWN I. FISCHMAN

CASE NO. 3:18-CV-04865- EMC

1 WILLIAM CHAMBERLAIN, on behalf of  
2 himself and all others similarly situated,

3 Plaintiff,

4 vs.

5 ELON MUSK and TESLA, INC.,

6 Defendants.

Case No. 3:18-cv-04876-EMC

7 JOHN YEAGER, individually and on behalf of  
8 all others similarly situated,

9 Plaintiff,

10 vs.

11 ELON MUSK and TESLA, INC.,

12 Defendants.

Case No. 3:18-cv-04912-EMC

13  
14 CARLOS MAIA, on behalf of himself and all  
15 others similarly situated,

16 Plaintiff,

17 vs.

18 ELON MUSK and TESLA, INC.,

19 Defendants.

Case No. 3:18-cv-04939-EMC

20 KEWAL DUA, Individually and on Behalf of  
21 All Others Similarly Situated

22 Plaintiff,

23 vs.

24 ELON MUSK and TESLA, INC.,

25 Defendants.  
26  
27  
28

Case No. 3:18-cv-04948-EMC

1 JOSHUA HORWITZ, Individually and on  
2 Behalf of All Others Similarly Situated

3 Plaintiff,

4 vs.

5 ELON MUSK and TESLA, INC.,

6 Defendants.

Case No. 3:18-cv-05258-EMC

7 ANDREW E. LEFT, Individually and on  
8 Behalf of All Others Similarly Situated

9 Plaintiff,

10 vs.

11 ELON MUSK and TESLA, INC.,

12 Defendants.

Case No. 3:18-cv-05463-EMC

13 ZHI XING FAN, Individually and on Behalf of  
14 All Others Similarly Situated

15 Plaintiff,

16 vs.

17 ELON MUSK and TESLA, INC.,

18 Defendants.

Case No. 3:18-cv-05470-EMC

19 SHAHRAM SODEIFI, Individually and on  
20 Behalf of All Others Similarly Situated

21 Plaintiff,

22 vs.

23 TESLA, INC., a Delaware corporation, and  
24 ELON R. MUSK, an individual,

25 Defendants.

Case No. 3:18-cv-05899-EMC

1 I, Shawn I. Fischman, declare under penalty of perjury:

2 1. I am a member of the Bar of the State of New York and General Counsel and  
3 Chief Compliance Officer for FNY Investment Advisers, LLC (“First New York” or the “Firm”).  
4 I respectfully submit this Reply Declaration in Further Support of The Motion of FNY Investment  
5 Advisers, LLC for Consolidation, Appointment as Lead Plaintiff and Approval of Selection of  
6 Lead Counsel.

7 2. I am duly authorized by First New York to bring this litigation and to bind the  
8 Firm in this litigation.

9 3. As an international equity trading firm, First New York has both domestic and  
10 international trading desks at its offices in New York City. The Firm also has a trading entity in  
11 London.

12 4. First New York employs experienced traders, each of whom is highly educated  
13 and trained. Such traders benefit from state-of-the-art information systems that enable them to  
14 communicate with other market participants. Their capabilities include market monitoring,  
15 market and technical analysis and order entry. First New York’s traders consistently follow news  
16 and other information disseminated in the market concerning the companies in which they invest.  
17 Specifically, through press releases and other public statements issued by such companies, as well  
18 as analyst research reports and issuer conference calls, First New York traders are continually  
19 reviewing market news and information affecting their investments. Accordingly, traders at First  
20 New York make trading decisions based on news and other information disseminated to the  
21 market by publicly traded companies, such as Tesla, Inc. (“Tesla”).

22 5. First New York serves as the investment adviser to FNY Partners Fund LP and its  
23 affiliates, including FNY Managed Accounts LLC (collectively, the “First New York Fund”).  
24 The First New York Fund held title to the Tesla securities reflected in First New York’s  
25 certification in this matter. First New York has the contractual authority to engage legal counsel  
26 and handle, prosecute and settle any claims of the First New York Fund.

1           6.       Each of First New York's traders directs the trading activity of a particular account  
2 owned by the First New York Fund. Each such trader is entitled to a portion of the net gains  
3 realized in the account he or she controls. However, net losses sustained in each account are  
4 generally not shared with the trader, but rather are borne entirely by the First New York Fund.

5           7.       First New York is not a "day trader," and it does not function as one. Moreover,  
6 First New York is not a "market maker," and it does not function as one. Rather, First New York  
7 is a sophisticated, multi-strategy institutional trading firm that employs a variety of trading  
8 strategies. While some of First New York's positions are purchased and sold within the same  
9 day, it employs a variety of stock trading strategies, including long-term strategies, in an attempt  
10 to maximize profitability. Moreover, First New York's traders consciously engage in transactions  
11 with regard to a security's market price, as well as the company's reported financials and other  
12 publicly available information.

13           8.       First New York's management (through a predecessor trading entity, First New  
14 York Securities LLC) previously co-led a class action for violations of the federal securities laws,  
15 captioned *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, MDL No. 12-2389 (S.D.N.Y.). First  
16 New York stands ready, willing and able to serve as both a Lead Plaintiff and Class  
17 Representative in this case and looks forward to testifying at a deposition and trial, if necessary.  
18 First New York will further assist in the prosecution of the litigation by providing documents and  
19 other information supporting plaintiffs' case.

20           9.       In consultation with my colleagues at First New York, I have selected Entwistle &  
21 Cappucci LLP and Susman Godfrey L.L.P. as First New York's counsel because these firms have  
22 successfully prosecuted securities class actions in the past, and I believe that the appointment of  
23 both firms as Co-Lead Counsel in this litigation would best serve the interests of the Class.  
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1 I declare under penalty of perjury under the laws of the United States that the foregoing is  
2 true and correct.

3 Dated: October 30, 2018

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5 Shawn I. Fischman

6 General Counsel and Chief Compliance Officer

7 FNY Investment Advisers, LLC

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